



MEMORANDUM

TO: Honorable Chairman and Members of the Board of Zoning Appeals

FROM: Terry Costello, Zoning Officer

DATE: March 7, 2013

SUBJECT: **ZA-0002-2013** **126 Lake Drive**

FACTS:

Mr. Sheldon M. Franck, Esquire has applied on behalf of Kensett Teller, Trustee, for a variance to Section 24-238(b), Yard requirements, to reduce the required rear yard setback from 35 feet to approximately 29 feet. This proposed variance request is to allow the continued placement of the decks that encroaches into the rear yard setback. This property is currently zoned R-1, Limited Residential can further be identified as JCC RE Tax Map No. 4740800032.

FINDINGS:

On June 14, 1988 a building permit application was submitted by Mr. and Mrs. Michael Teller and approved for the building of a single family dwelling located at 126 Lake Drive, Lot 32 in the Lakewood Subdivision. On September 8, 1988 a revision was submitted to include the addition of deck to the home. Neither a site plan nor drawings were submitted as part of the application. Staff could not verify whether the decks encroached as part of the original plan or whether the plan was changed during construction. On the building permit the rear setback was stated as 36 feet. Therefore at the time, and according to paperwork submitted, the proposed location met all the setback requirements.

On May 4, 2011 a boundary line extinguishment was approved for Lots 31 and Lot 32 in the Lakewood Subdivision. According to the plat that was submitted at that time it was noted that a portion of the rear deck and a portion of the deck on the right side of the property encroached into the rear setback.

The property is now for sale and a contract has been submitted by a buyer. In the course of closing on the property it was noticed that a portion of the rear deck and a portion of the deck on the right side of the property encroached into the rear setback. The deck on the back encroaches 5 feet while the side deck encroaches 6 feet. Mr. Franck, attorney for the Tellers, notified the County and was informed that a variance would be needed. A survey showing the existing decks and the encroachments has been attached. At the time of this writing, staff has received one letter from a neighbor at 124 Lake Drive that is in support of the variance.

RECOMMENDATION:

An unnecessary hardship exists when the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property. Staff finds no undue hardship in this case and

cannot support the variance. Staff acknowledges that the property owners were not aware of the situation and have worked with staff diligently to remedy the issues. However should the Board wish to grant the variance, staff feels the variance would not be a detriment to adjoining properties nor alter the character of the area. The Board may also add a condition to the variance that no further encroachment is permissible.

Attachments:

Resolution

Variance Application

Location map

Photos

Original Building Permits dated 06-14-1988 and 09-08-1988

Original Subdivision Plat dated 01-06-1987

Survey dated 04-02-2011